

REMARKS

Claims 1-26 are pending in this application and are currently rejected to by the Examiner. In response to the restriction requirement dated 01 September 2005, Applicants elected **Group I** (claims 1-26) and withdrew the remaining claim groups. The withdrawn claims are cancelled in this response. New claims 57-64 are added.

Claim 1 is amended to refine the definition of disruptive events, emphasizing open-ended and distant end events appropriately modeled by a step function.

New independent claims 59 and 62 cover a system and article of manufacture related to the method of claim 1. No new matter is intended to be added by these claims. They are supported by the original claims and paragraph [0032] of the specification.

New claims 57-58, 60-61 and 63-64 specify as disruptive events cannibalization of sales or demand by introduction of new items at a location and opening or closing of competitive or complementary stores. No new matter is intended to be added by these claims, which are supported by specification paragraphs [0003] and [0016].

In the recent Office Action, The Examiner has rejected claims 7, 8, 19-22 and 23 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Claims 1,15, 18-21 and 23-26 are also rejected under 35 U.S.C. 102(b) as being anticipated by Fields et al. (U.S. 5,459,656). Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fields et al. (U.S. 5,459,656). Finally, claims 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fields et al. (U.S. 5,459,656) in view of Crosswhite (U.S. 6,611,726).

Objection to the Abstract

The Abstract has been rewritten to overcome the objections.

Objections to the Drawings

The Examiner's remarks are mistaken regarding the drawing coverage of this application. Properly incorporated by reference are seven co-pending applications, which have been overlooked in the Examiner's remarks.

The Examiner's attention is particularly directed to the incorporated-by-reference application no. 09/905,255, which has been allowed as amended. Forty-nine pages of

figures and 127 pages of disclosure are included, which adequately cover the subjects listed in the Examiner's objection.

The Examiner has the option to require bodily incorporation of material that has been incorporated by reference. If the Examiner reviews application no. 09/905,255 and determines that portions of it need to be bodily incorporated, we can readily add to this specification or even substitute the other specification for this one, without adding new matter. Please advise which figures and text should be added, if any, from the wealth of available related applications.

Rejection Under 35 U.S.C. § 112 second paragraph of Claims 7, 8, 19-22 and 23

The Examiner rejects **claims 7, 8, 19-22 and 23** under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 7-8

The Examiner argues that **claims 7-8** are indefinite for using "its" to refer to "a particular disruptive event". Applicants point out that there is no other object in the sentence to which "its" could refer – the sentence is only a few words! Without narrowing the claim in any way, Applicants have amended the claim to confirm the Examiner's interpretation.

As amended, claims 7-8 should not be rejected under § 112, second paragraph.

Claims 19-22

The Examiner argues that **claims 19-22** are indefinite for lack of antecedent basis for "the projected demand estimates". By amendment, the word "estimates" has been deleted, confirming Examiner's interpretation and potentially broadening (certainly not narrowing) the claims.

As amended, claims 19-22 should not be rejected under § 112, second paragraph.

Claim 23

The Examiner argues that **claim 23** is indefinite for lack of antecedent basis for "the estimated impact". The words have been transposed to "impact estimates" as used in claim 1. For "the actual impact", "an" replaces "the".

As amended, claim 23 should not be rejected under § 112, second paragraph.

Applicants respectfully submit that the rejection of claims 7, 8, 19-22 and 23 under § 112, second paragraph should be withdrawn.

Rejection Under 35 U.S.C. § 102(b)/103(a) of Claims 1-26

The Examiner rejects **claims 1-26** under 35 U.S.C. § 102(b) as anticipated by Fields et al. (U.S. 5,459,656), and under § 103(a) as obvious over Fields et al., by itself or in combination with Crosswhite (U.S. 6,611,726).

Claim 1

Claim 1 as amended includes the limitations:

calendar one or more disruptive events with associated impact estimates to apply to the items at the locations, wherein the disruptive events have a start date and are either open-ended or have a distant end date that is appropriately modeled by a step impact on sales history or projected demand; and

applying the impact estimates, wherein ...

These limitations are not found in Fields et al.

Fields et al. does not include either the open-ended disruptive events or a step function. The time horizon for the Fields et al. day models, reference 30, is a day. There is no suggestion that a day model would be applied in perpetuity. The examples in column 4, on which the Examiner relies, are all short-term events, such as "Sidewalk Sale", "Mall Sale", "Day Before Christmas" and "Day After Thanksgiving." The curves that Fields et al. illustrate in FIG. 2(a) (repeated on the cover of the patent) are not open-ended step functions and there is no discussion of such functions.

Therefore, claim 1 should be allowable over Fields et al.

Claims 2- 26

Claims 2-26, which depend from claim 1, should be allowable over Fields et al., by itself or in combination with Crosswhite, for at least the same reasons as claim 1.

New Independent Claims 59 and 62

Claims 59 and 62 should be allowable over Fields et al. for at least the same reasons as claim 1, as they are system and article of manufacture counterparts to claim 1.

New Dependent Claims 57-58, 60-61 and 63-64

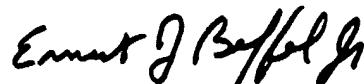
Claims 59 and 62 should be allowable over Fields et al. as specifying disruptive events alternatively to be cannibalization of sales or demand by introduction of new items or opening / closing of competitive or complementary stores. Fields et al. does not take into account either of these disruptive event categories, which are described in the specification in paragraphs [0003] and [0016].

CONCLUSION

Applicants respectfully submit that the pending claims are now in condition for allowance and thereby solicit acceptance of the claims, in light of these amendments.

The undersigned can ordinarily be reached at his office at (650) 712-0340 from 8:30 a.m. to 5:30 p.m. PST, Monday through Friday, and can be reached at his cell phone at (415) 902-6112 most other times.

Respectfully submitted,



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